

SENATE RECORD VOTE ANALYSIS

106th Congress
1st Session

Vote No. 364

November 10, 1999, 5:04 p.m.
Page S-14490 Temp. Record

BANKRUPTCY REFORM/\$100,000 Homestead Exemption Cap

SUBJECT: Bankruptcy Reform Act of 1999 . . . S. 625. Kohl modified amendment No. 2516.

ACTION: AMENDMENT AGREED TO, 76-22

SYNOPSIS: As reported, S. 625, will enact reforms to prevent creditors who have the means of paying their debts from unjustly filing for bankruptcy, will enact reforms to protect consumers from unfair credit practices, and will enact business bankruptcy reforms. The bill is similar to the bipartisan bill considered last session (see 105th Congress, 2nd session, vote No. 313).

The Kohl modified amendment would provide that a debtor could use State law to shield no more than \$100,000 in equity in a residence (a "homestead exemption") from Federal bankruptcy proceedings. An exception from this limitation would be given for the principle residence of a family farmer.

Those favoring the amendment contended:

The Kohl amendment would close a loophole in current Federal bankruptcy law that is increasingly being exploited by rich Americans who are dishonestly twisting the law in order to run up debts and then escape from repaying them. That loophole is that the Federal Government has said that States may adopt laws to protect bankrupts from losing their homes in bankruptcy, and several States have taken that right to the extreme, providing protections for homes no matter how valuable they may be. The General Accounting Office has studied this problem and has found that each year, in Texas and Florida alone (both of those States have unlimited homeowner exemptions), approximately 400 wealthy homeowners declare bankruptcy and keep homes in which they have more than \$100,000 in equity. Together, those homeowners, some of whom live in luxurious mansions, make their creditors write off a total of \$120 million in debt. Increasingly, wealthy deadbeats are advised by their shady lawyers to move to Florida or Texas and borrow heavily to buy a mansion on which they have no mortgage and then declare bankruptcy. Studies confirm that moderate income Americans do not abuse this right, but rich, dishonest people do. Setting a \$100,000 equity cap is only going to

(See other side)

YEAS (76)				NAYS (22)		NOT VOTING (1)	
Republican (34 or 64%)		Democrats (42 or 93%)		Republicans (19 or 36%)	Democrats (3 or 7%)	Republicans (1)	Democrats (0)
Abraham	Inhofe	Akaka	Inouye	Allard	Graham	McCain- ²	
Ashcroft	Jeffords	Baucus	Johnson	Bennett	Lautenberg		
Bond	Kyl	Bayh	Kennedy	Brownback	Torricelli	VOTING PRESENT (1) Fitzgerald EXPLANATION OF ABSENCE: 1—Official Business 2—Necessarily Absent 3—Illness 4—Other SYMBOLS: AY—Announced Yea AN—Announced Nay PY—Paired Yea PN—Paired Nay	
Bunning	Lott	Biden	Kerrey	Craig			
Burns	Lugar	Bingaman	Kerry	Crapo			
Campbell	McConnell	Boxer	Kohl	Gramm			
Cochran	Murkowski	Breaux	Landrieu	Grams			
Collins	Roth	Bryan	Leahy	Gregg			
Coverdell	Santorum	Byrd	Levin	Hagel			
DeWine	Sessions	Chafee, Lincoln	Lieberman	Helms			
Domenici	Shelby	Cleland	Lincoln	Hutchison			
Enzi	Smith, Gordon	Conrad	Mikulski	Mack			
Frist	Snowe	Daschle	Moynihan	Nickles			
Gorton	Stevens	Dodd	Murray	Roberts			
Grassley	Voinovich	Dorgan	Reed	Smith, Bob			
Hatch	Warner	Durbin	Reid	Specter			
Hutchinson		Edwards	Robb	Thomas			
		Feingold	Rockefeller	Thompson			
		Feinstein	Sarbanes	Thurmond			
		Harkin	Schumer				
		Hollings	Wellstone				
			Wyden				

Compiled and written by the staff of the Republican Policy Committee—Larry E. Craig, Chairman

affect rich people who will be able to get back on their feet anyway. It will not force poor working Americans on to the street.

Some Senators have said that this is an issue of States' rights. The Constitution says otherwise. Bankruptcy law is clearly under Federal jurisdiction. When someone goes to Federal court to file for bankruptcy, the Federal Government clearly has the authority to say what rules apply. We do not believe that it is an issue of States' rights to say that Florida and Texas should be allowed to serve as a haven for rich deadbeats from other States who want to hide the money that they owe to creditors in those other States. No "bankrupt" person should be allowed to live in a \$5-million, \$10-million, or \$50-million luxury mansion while writing off millions of dollars in legitimate debt owed to creditors.

This issue is not about States' rights or throwing old or poor people in the street--it is about stopping rich deadbeats. Poorer Americans are not going to have \$100,000 in equity in their homes to protect, but under current law in many States rich deadbeats are able to protect millions in such equity. The Kohl amendment would stop that practice. We urge our colleagues to support this amendment.

Those opposing the amendment contended:

The Kohl amendment would create a dangerous, one-size-fits-all cap on the homestead exemption. We oppose this cap for four reasons. First, it does not take into consideration that the cap would have wildly different effects in different States because of the huge differences in the cost of residences in different States. For instance, the median price of a home in California is more than \$215,000, but the median price of a home in Oklahoma is just \$92,500. Under this amendment, if an elderly couple in California on a modest fixed income got into financial trouble, and owned a home worth \$250,000 on which they had paid off the mortgage, they could only protect \$100,000 in equity. They could not afford a \$150,000 mortgage, especially when they were in bankruptcy, so they would end up being forced to sell their house. The same couple in a similar house in another State could be completely protected by the \$100,000 limit. Our second, related reason for opposing the Kohl amendment is that it would violate States' rights. For the past 130 years the Federal Government has allowed each State to decide what limits, if any, it would place on the homestead exemption for its citizens who filed for bankruptcy. While it is technically true that it did not have to give this allowance, it is certainly in keeping with the spirit of our federal system of Government to say that allowances should be made in the law to accommodate different needs and preferences of the States. Our third reason for opposing the Kohl amendment is that it would not take into account the different reasons States may want to provide a more generous homestead exemption. For instance, Kansas has a 160-acre exemption, regardless of price, that is based on its farming structure. Kansas was settled by family farmers who were given 160-acre land grants by the Federal Government, and it still has large numbers of family farmers who are making a living in this increasingly capital-intensive business. To protect those farmers during downturns, Kansas has provided, by law and even by its constitution, that farmers will not lose their homesteads if they are forced into bankruptcy. In practice, this system has helped creditors as well because it has kept farmers on their land and made it possible for them to reorganize, become profitable again, and pay off their debts. The fourth reason we have for opposing the Kohl amendment is that we believe that States, regardless of any practical need, should be allowed to have as a preference a rule that bankrupts will not lose their homes. Texas, like Kansas, has written its homestead exemption into its Constitution. Texas goes farther than Kansas, though. As a matter of principle, Texas wants to make sure that no one who declares bankruptcy will lose his or her home and become a ward of the State. Other States have other attitudes; we think that each State should decide for itself. For these reasons, we oppose the Kohl amendment.